

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B01

PLR-136933-13

Date:

February 20, 2014

Shareholder A =

Shareholder B =

Distributing =

Controlled =

LP =

Cooperative =

Business =

State X =

a =

b =

c =

d =

Year =

Dear :

This letter responds to your authorized representative's letter, dated August 20, 2013, requesting rulings on certain federal income tax consequences of a proposed transaction described below (the Proposed Transaction). The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the distributions described below: (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) are used principally as a device for the distribution of the earnings and profits of a distributing corporation or a controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code and Treas. Reg. § 1.355-2(d)); or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in any distributing corporation or any controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

SUMMARY OF FACTS

Distributing is a State X corporation that uses the cash receipts and disbursements method of accounting and has a fiscal year end. Shareholder A and Shareholder B own all of Distributing's common stock (the sole class of Distributing stock outstanding), in the following proportions: Shareholder A owns a%; and Shareholder B owns b%.

Since its incorporation in Year, Distributing has been directly engaged in Business. Distributing owns a c% minority interest in LP and an approximately d%

minority interest in Cooperative, each of which is engaged in activities related to Business.

The taxpayer has submitted financial information indicating that Distributing's Business has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

Discord between Shareholder A and Shareholder B over the management, operation, and growth of Business has limited Distributing's ability to successfully engage in Business. Accordingly, Distributing is undertaking the following series of transactions (collectively, the "Proposed Transaction").

PROPOSED TRANSACTION

- (i) Distributing will incorporate Controlled under the laws of State X. Controlled will have authorized a single class of voting common stock and will use the cash receipts and disbursements method of accounting.
- (ii) Distributing will transfer assets related to the conduct of Business to Controlled in exchange for Controlled voting common stock and the assumption by Controlled of liabilities associated with the property transferred (the Contribution). The assets transferred to, and liabilities assumed by, Controlled will equal approximately 6% of Distributing's assets and liabilities as determined by an independent appraisal.
- (iii) Distributing will distribute all of the stock of Controlled to Shareholder B in exchange for all of Shareholder B's stock in Distributing in a value-for-value exchange (the Distribution). Thereafter, Shareholder A will own all of Distributing's common stock and Shareholder B will own all of Controlled's common stock.

REPRESENTATIONS

Distributing has made the following representations regarding the Contribution and the Distribution:

- (a) The fair market value of the Controlled stock to be received by Shareholder B will be approximately equal to the fair market value of the Distributing stock surrendered by such shareholder in the exchange.
- (b) No part of the consideration to be distributed by Distributing will be received by Shareholder B as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

- (c) The five years of financial information submitted on behalf of Business conducted by Distributing is representative of the present operations of Business, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) Neither Business conducted by Distributing nor control of an entity conducting that business was acquired during the five year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (e) Following the Distribution, Distributing and Controlled each will continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of Business conducted by Distributing prior to the consummation of the transaction.
- (f) The Proposed Transaction is being carried out for the following corporate business purpose: to prevent disharmony and management conflicts from adversely impacting Distributing's business. The Proposed Transaction is motivated, in whole or substantial part, by this corporate business purpose.
- (g) The Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (h) The total adjusted bases of the assets transferred to Controlled in the Contribution will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of section 357(d)) by Controlled, and (ii) the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)) received by Distributing and transferred by it to its creditors and shareholders in connection with the Proposed Transaction.
- (i) The total fair market value of the assets that Distributing will transfer to Controlled in the Contribution will exceed the sum of: (i) the amount of liabilities assumed (within the meaning of section 357(d)) by Controlled in connection with the Proposed Transaction; (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the Proposed Transaction; and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing from Controlled in connection with the Proposed Transaction. The total fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Proposed Transaction.
- (j) The liabilities to be assumed (within the meaning of section 357(d)) by Controlled in the Contribution and the liabilities to which the transferred

assets will be subject were incurred in the ordinary course of business and are associated with the assets being transferred.

- (k) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Proposed Transaction.
- (l) No investment tax credit determined under section 46 has been, or will be, claimed for any property to be transferred by Distributing to Controlled in the Contribution.
- (m) The aggregate fair market value of the assets transferred to Controlled in the Contribution will equal or exceed the aggregate adjusted bases of these assets.
- (n) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.
- (o) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (p) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution, or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (q) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

- (r) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (s) Neither Distributing nor Controlled will be an investment company as defined in section 368(a)(2)(F)(iii) and (iv).
- (t) Distributing is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).
- (u) Immediately after the Proposed Transaction (taking into account section 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in the stock of Distributing or Controlled, who did not hold such an interest immediately before the Distribution, or (ii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (v) Distributing and Controlled each will pay its respective expenses, if any, incurred in connection with the Proposed Transaction.

RULINGS

Based solely on the information and representations submitted, we rule as follows on the Contribution and Distribution:

- (1) The Contribution, together with the Distribution, will be a reorganization under section 368(a)(1)(D). Distributing and Controlled each will be "a party to the reorganization" within the meaning of section 368(b).
- (2) Distributing will recognize no gain or loss on the Contribution (sections 357(a) and 361(a)).
- (3) Controlled will recognize no gain or loss on the Contribution (section 1032(a)).
- (4) Controlled's basis in each asset received from Distributing in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution (section 362(b)).
- (5) Controlled's holding period in each asset received from Distributing in the Contribution will include the period during which Distributing held that asset (section 1223(2)).
- (6) Distributing will recognize no gain or loss on the Distribution (section 361(c)(1)).

- (7) Shareholder B will recognize no gain or loss (and no amount will be included in Shareholder B's income) on the receipt of Controlled stock in exchange for Distributing stock in the Distribution (section 355(a)(1)).
- (8) Shareholder B's basis in the Controlled stock received in the Distribution will be the same as Shareholder B's adjusted basis in the Distributing stock surrendered in exchange therefor, allocated in the manner described in Treas. Reg. § 1.358-2(a)(2) (section 358(a)(1) and (b)).
- (9) Shareholder B's holding period in the Controlled stock received in the Distribution will include the holding period of the Distributing stock surrendered in exchange therefor, provided that Shareholder B holds its Distributing stock as a capital asset on the date of the Distribution (section 1223(1)).
- (10) The earnings and profits of Distributing, if any, will be allocated between Distributing and Controlled in accordance with section 312(h)(1) and Treas. Reg. § 1.312-10.

CAVEATS

We express no opinion about the federal income tax treatment of the Proposed Transaction under other provisions of the Internal Revenue Code or regulations or the federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding whether the Distribution satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); whether the Distribution is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); and whether the Distribution and any acquisition or acquisitions are part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Frances L. Kelly
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Corporate)

cc: